

Chapter 2.90

ELECTIONS AND CAMPAIGN CONTRIBUTIONS

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2.90.010 Purpose and intent.

Inherent to the cost of election campaigning is the problem of improper influence, real or potential, exercised by campaign contributors over elected officials. It is the purpose and intent of the city council in enacting the ordinance codified in this chapter to preserve an orderly political forum in which individuals and groups may express themselves effectively; to place realistic and enforceable limits on the amounts of money that may be contributed to political campaigns in municipal elections for city offices; to limit the use of loans and credit in the financing of municipal election campaigns; and to

provide full and fair enforcement of all the provisions of this chapter.

(Ord. 93-11-1170 § 2: Ord. 85-10-962 § 1 (part))

2.90.020 Definitions.

For the purpose of this chapter, the following definitions shall apply:

A. "Campaign contribution limitation" means contributions over a given election cycle from the contributing person in support of or in opposition to any candidate, including contributions to all the candidate's controlled committees, of \$440 for the 2006 election cycle, provided, that such dollar limit shall increase by 12% on January 1, 2010, and by the same percentage on January 1st of every fourth year thereafter. This amount shall be rounded up or down to the nearest amount divisible evenly by \$25.

B. "City office" means an elected office of the city, including the city council, the city clerk and city treasurer, or any other office which shall become elective in the future.

C. "Election cycle" means:

1. For an incumbent candidate seeking re-election, a period beginning from the date the office holder assumes his or her city office for his or her present term, and ending on the date the newly elected person assumes the city office following the election in which the candidate seeks re-election;

2. For an incumbent city office holder raising funds for election to any other city office, a period of two years prior to the date of the election for the city office sought;

3. For nonincumbent candidates in any regular election for city office, a period commencing from the date of the last regular election and ending on the date of the election for the city office sought;

4. For nonincumbent candidates in any special elections for city office, a period beginning from the date the special election is set for the ballot and ending on the date of the special election for the city office sought.

D. For purposes of this chapter, street address means the street name and building number, and the city, state, and ZIP Code, or the Army and Air Force Post Office (A.P.O.) or Fleet Post Office (F.P.O.) address assigned by the United States government to an individual or a dependent who resides with the individual when the individual is on government duty outside the United States and does not have a conventional street address.

E. For purposes of this chapter, spouse shall include Domestic Partner as defined by Section 297 of the Family Code of California.

(Ord. 2010-04-1412 §§ 1, 2: Ord. 2006-08-1362 § 1)

2.90.030 Campaign contribution checking account.

Each candidate and each controlled committee shall establish a campaign contribution checking account within five business days following receipt of a contribution, but no later than five business

days after the candidate files his or her nomination papers, whichever shall first occur. Each committee shall establish a campaign contribution checking account within five business days following receipt of a contribution. The name of the bank and the number of the account shall be filed with the city clerk within five business days after the opening of the account. All contributions of money or checks, or anything of value converted by the candidate or committee to money or a check, made to a candidate, to a person on behalf of a candidate, or to a committee shall be placed in the candidate's or committee's checking account within five business days after receipt thereof. A candidate and his or her controlled committee shall establish and maintain one joint checking account. A candidate's personal campaign funds, and including contributions from the candidate's spouse, shall also be placed in his or her campaign contribution checking account before being disbursed for use in his or her campaign.

(Ord. 93-11-1170 § 4; Ord. 85-10-962 § 1 (part))

2.90.040 Liquidation of accounts.

In the event that payment has been made for all goods and services furnished in connection with the campaign of a candidate or controlled committee, a campaign contribution checking account may be liquidated by paying the remaining balance in the account to the candidate or controlled committee for use in any lawful manner. In the event that payment has been made for all goods and services furnished in connection with the activities of a committee other than a controlled committee, a campaign contribution checking account may be liquidated by paying the remaining balance to the city treasurer for deposit into the city's general fund.

(Ord. 93-11-1170 § 5; Ord. 85-10-962 § 1 (part))

2.90.050 Accountability.

A. Contribution Checks – Auditing. Each candidate or committee establishing a campaign contribution checking account shall designate an individual as treasurer, who shall maintain a record which shall include copies of checks of every contribution received, and be in sufficient detail to permit an auditing of the account.

B. Filing Campaign Statements. The treasurer of a candidate or committee formed, or existing, primarily to support or oppose a candidate or candidates for city office, or active only within the city and involved in any election for city office, shall prepare a campaign statement on a form prescribed by the city clerk and file same with the city clerk at the following times:

1. On the dates required for filing of campaign statements under Article 2 of Chapter 4 of the California Political Reform Act (Government Code § 84200-84225).

2. On the fourteenth day after any municipal election at which the candidate is seeking office covering the period ending 16 days prior to the election through the second Thursday following the election.

C. Report Contents. The campaign statements required to be filed with the city clerk shall disclose the total amount of contributions received and expenditures made, the name of each person who contributed one hundred dollars or more, the name of each person to whom an expenditure was made, and all other information required under Government Code § 84211.

D. Public Records. The campaign statements described in this section, and all information filed with the city clerk in connection with campaign statements shall be deemed to be public records and shall be subject to public disclosure upon request.

(Ord. 2010-04-1412 § 3; Ord. 2006-08-1362 § 2)

2.90.060 Campaign contributions limitation.

A. No person, other than a candidate or the candidate's spouse, shall make, no candidate or committee shall solicit or accept, and no person working for a candidate or a committee shall solicit or accept, any contribution in excess of the campaign contribution limitation. This section shall not limit contributions to the campaign made personally by the candidate, or the candidate's spouse, from his or her own funds; provided such contributions are placed into the campaign contribution checking account pursuant to Section 2.90.030, and further provided, that the candidate, or spouse, is not acting as an agent or intermediary for any other person.

B. Extensions of credit to a candidate or committee for purposes of aiding the political activity of a candidate or committee in amounts of more than the campaign contribution limitation and for periods of longer than sixty days are prohibited; provided, that a candidate may personally borrow funds where such funds will be the candidate's personal contribution to his or her campaign if the loan is a bona fide loan made on such terms and conditions comparable to those available from commercial lending institutions for loans not made for political purposes, including payment of a reasonable rate of interest and a reasonable, specific repayment schedule. The loan shall be made in the form of a loan agreement, promissory note or other appropriate written document, which document shall be maintained and made available pursuant to Section 2.90.050.

C. The terms of this chapter are applicable to any contribution, whether it is used in a current campaign, or to pay deficits incurred in prior campaigns, or otherwise.

(Ord. 93-11-1170 § 7; Ord. 89-05-1032 § 1; Ord. 85-10-962 § 1 (part))

2.90.070 Assumed name contributions.

No contribution shall be made, directly or indirectly, by any person or combination of persons acting jointly in a name other than the name by which he or she or it is identified for legal purposes, nor in the name of any other person or combination of persons, nor anonymously. No person shall make a contribution in the name of any person who is not eligible to vote because of age. No person shall make a contribution in his, her or its name of anything belonging to another person or received from another person on the condition that it be used as a contribution. Whenever it is discovered that a contribution has been received in violation of this section, that contribution shall be returned to whoever made it, and the city clerk shall be notified by the recipient of the contribution of the amount of the contribution and the person to whom it was returned. If the recipient of the contribution cannot ascertain the person who made the contribution, the contribution shall be forwarded to the city treasurer for deposit in the general fund of the city.

(Ord. 93-11-1170 § 8; Ord. 85-10-962 § 1 (part))

2.90.080 Expenditures uncontrolled by a candidate or a controlled committee.

Persons not subject to the control of a candidate or a candidate's controlled committee who make independent expenditures for or against a candidate or identified group of candidates for city office shall indicate clearly on any material published, displayed or broadcast that the expenditure was not authorized by a candidate or a candidate's controlled committee whenever such an expenditure, in whole or in part, would have been covered by the provisions of this chapter were it subject to the control of a candidate or a candidate's controlled committee.

(Ord. 93-11-1170 § 9; Ord. 85-10-962 § 1 (part))

2.90.085 Independent expenditure reports.

A. Any person or committee meeting the criteria of subsection D of this section, which makes independent expenditures in excess of five hundred dollars in any calendar year, shall file an independent expenditure report with the city clerk.

B. Independent expenditure reports required hereunder shall be in a form provided by the city clerk, and shall contain all of the following:

1. The name, street address, and telephone number of the person or committee making the expenditure and of the committee's treasurer;

2. If the report is related to a candidate, the full name of the candidate and the office for which the candidate seeks nomination or election;

3. The total amount of expenditures related to the candidate during the period covered by the report made to persons who have received less than one hundred dollars;

4. The total amount of expenditures related to the candidate during the period covered by the report made to persons who have received one hundred dollars or more;

5. For each person to whom an expenditure of one hundred dollars or more related to the candidate has been made during the period covered by the report, or for each person who has provided consideration to the maker of the independent expenditure for an expenditure of one hundred dollars or more during the period covered by the report:

a. His or her full name,

b. His or her street address,

c. If the person is a committee, the name of the committee, the number assigned to the committee by the Secretary of State, or if no number has been assigned, the full name and street address of the treasurer of the committee,

d. The date of the expenditure,

e. The amount of the expenditure,

f. A brief description of the consideration for which each such expenditure was made and the value of the consideration if less than the total amount of the expenditure,

g. The cumulative amount of expenditures to such person over the period covered by the report;

6. A list of all the filing officers with whom the committee filed its most recent campaign statement.

C. The independent expenditure reports required hereunder shall be filed semiannually. On January 31st a report shall be filed for the period covered July 1st through December 31st of the preceding year. On July 31st, a report shall be filed for the period covering January 1st through June 30th of that year. A supplemental independent expenditure report shall also be filed for any independent expenditure which totals in the aggregate one thousand dollars or more and is made for or against any specific candidate for city office, after the closing date of the prior semiannual report period. Such supplemental independent expenditure report shall be in a form provided by the city clerk, and shall be filed within twenty-four hours of the making of the independent expenditure.

D. The independent expenditure reporting requirements herein shall apply only to candidates for city office, their controlled committees, committees formed or existing primarily to support or oppose the candidacy of a candidate for city office, to city general purpose committees, and to other committees active only within the city.

(Ord. 94-01-1176 § 1)

2.90.090 Enforcement–Violation–Penalties.

A. In addition to any other penalty provided by law, any person who knowingly or wilfully violates any provision of this chapter, including any wilful or knowing failure to keep a record of contributions, to place contributions in a campaign contribution checking account, or to refuse excessive contributions, shall be guilty of a misdemeanor and punishable as provided in Section 1.16.010 of this code.

B. Any contribution received in violation of this chapter shall be returned to the contributor if the funds can be identified; if the funds cannot be identified, the amount of the contribution made in violation of this chapter shall be paid to the city treasurer for deposit in the general fund of the city.

C. The city attorney may maintain in the name of the city, or a resident of the city may maintain in his or her own name, a civil action at any time during an election cycle or thereafter, in a court of competent jurisdiction to enjoin actual or threatened violations of, or to compel compliance with, or to obtain a judicial declaration regarding the applicability of or compliance with, the provisions of this chapter.

D. The city attorney may maintain in the name of the city, or a resident of the city may maintain, in his or her own name, a civil action to recover from a candidate, or committee, or from any person who intentionally or negligently violates any of the reporting requirements or contribution limitations set forth in this chapter, an amount up to the campaign contribution limitation or three times the amount not reported or the amount received in excess of the amount allowable pursuant to this chapter, whichever is

greater. Any money recovered in any such action shall be deposited in the city's general fund.

E. Any limitation of time prescribed by law within which criminal prosecution or a civil action pursuant to this chapter must be commenced shall not begin to run until discovery of the violation.

F. If, after election, any holder of a city office is convicted of a violation of any provision of this chapter, such violation shall constitute an offense involving violation of official duties, and the office shall be deemed vacant pursuant to Government Code Section 1770. Any person convicted of a violation of this chapter shall be ineligible to hold a city office for a period of five years from and after the date of the conviction.

(Ord. 93-11-1170 § 10; Ord. 85-10-962 § 1 (part))

2.90.100 Application of limitation upon amendment of chapter or adjustment of limitation.

A. In determining whether any particular contribution exceeds the campaign contribution limitation, all contributions made during the election cycle including the effective date of any ordinance amending this chapter, shall be counted towards the campaign contribution, provided that no person whose contributions exceed the campaign contribution limitation during such period as a result of any amendment shall be in violation of this chapter so long as that person does not make, solicit or accept further contributions in support of or in opposition to a candidate or group of candidates until that person would otherwise be permitted to make, solicit or accept contributions pursuant to this chapter.

B. Upon adjustment of the amount of the campaign contribution limitation pursuant to subsection A of Section 2.90.020, the given election cycle for determining the appropriateness of the contribution shall remain the election cycle in which the adjustment becomes effective.

(Ord. 93-11-1170 § 11; Ord. 85-10-962 § 1 (part))

2.90.110 Burden of proof.

Wherever this chapter provides that a contribution or expenditure is exempt from the provisions hereof if "it is clear from the surrounding circumstances that it is not made for political purposes," the burden of proof shall be on the candidate or committee to demonstrate by clear and convincing evidence that such contribution or expenditure does not have a political purpose and, unless such burden is met, it shall be presumed that the purpose is political.

(Ord. 93-11-1170 § 12; Ord. 85-10-962 § 1 (part))

2.90.120 Rules of construction.

This chapter shall be construed liberally in order to effectuate its purposes. No error, irregularity, informality, neglect or omission of any officer in any procedure taken under this chapter that does not directly affect the jurisdiction of the city council to control campaign contributions shall avoid the effect of this chapter.

(Ord. 93-11-1170 § 13)

2.90.130 Severability.

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the chapter and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

(Ord. 93-11-1170 § 14)

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